

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

SOUTHEAST MISSOURI HOSPITAL, and)	
SAINT FRANCIS MEDICAL CENTER, on behalf)	
of themselves and all others similarly situated,)	
)	
Plaintiffs,)	Case No. 1:07-00031 (TCM)
)	
v.)	Magistrate Judge Thomas C.
)	Mummert III
C.R. BARD, INC.,)	
)	
Defendant.)	
)	

**DEFENDANT C.R. BARD, INC.'S MOTION FOR LETTER OF REQUEST
FOR THE COMPULSION OF EVIDENCE IN DENMARK**

Defendant C.R. Bard, Inc. ("Bard"), through its undersigned counsel, hereby moves this Honorable Court to execute an original copy of the Letter of Request attached as Exhibit 1 so that Bard can obtain relevant and necessary discovery from Coloplast A/S. In support of this motion, Bard states as follows:

1. Plaintiffs' Second Amended Class Action Complaint alleges that Rochester Medical's Release-NF Foley catheter is a technologically innovative infection control Foley catheter. Furthermore, Plaintiffs allege that Rochester Medical was excluded from selling the Release-NF Foley catheter as a result of Bard's alleged anticompetitive conduct.

2. Coloplast A/S is a manufacturer and distributor of urological catheter products based in Denmark.

3. In June 7 2002, Rochester Medical Corporation and Coloplast A/S entered into a private licensing agreement whereby Coloplast acquired the exclusive right to market the

Release-NF throughout the world (with the exceptions of the U.S., Canada, South Korea, and Turkey) under the Coloplast name. The contract was set to terminate in 2013.

4. Coloplast A/S was unable to achieve significant sales of the Release-NF and the deal was terminated sometime in 2006 or 2007.

5. Additionally, in 2006, Coloplast A/S acquired Mentor's urology business, which manufactures urological products that compete with Bard's urological products.

6. Moreover, both Coloplast A/S and Mentor produced documents in the *Rochester Medical* litigation. The documents produced by Mentor have been produced in the present case, however, the production does not include documents from 2005-present. Coloplast A/S would not consent to the production of its documents in the present case.

7. Coloplast also produced a witness, Thomas Fenst, for deposition in the *Rochester Medical* litigation.

8. As set forth in detail in the attached Letter of Request, Bard seeks the following discovery from Coloplast A/S: (1) testimony from Coloplast's corporate representative; (2) documents concerning its private licensing agreement with Rochester Medical and the termination of that agreement; (3) documents from 2005-present related to Mentor's urological catheter business (to supplement the documents already produced in the *Rochester Medical* litigation); and (3) copies of all documents produced by Coloplast A/S in the *Rochester Medical* litigation.

8. All documents requested are in the possession of Coloplast A/S in Denmark. No alternate means of securing the documents and testimony requested are available to Bard.

9. Fed. R. Civ. P. 28(b) and The Hague Convention on the Taking of Evidence in Civil or Commercial Matters (codified at 28 U.S.C. § 1781) authorizes this Court to request the

assistance of the Government of Denmark in compelling testimony and the production of documents from Coloplast A/S. Denmark is a signatory of the Hague Convention.

WHEREFORE, Defendant Bard respectfully asks the Court to execute an original copy of the Letter of Request attached as Exhibit 1, so that Defendants can obtain relevant and necessary discovery from Coloplast A/S before trial.

Dated: November 19, 2008

Respectfully submitted,

/s/ Michael Roche
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Attorneys for Defendant C.R. Bard, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2008, the foregoing instrument was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel who are deemed to have consented to electronic service.

/s/ Michael Roche
Michael Roche